

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RONALD M. GOLBERG, SHERWIN GEITNER,
and PHILLIP C. LEAVITT,

Plaintiffs,
-against-

MEMORANDUM & ORDER
13-CV-7353 (JS) (AYS)

UNITED STATES OF AMERICA, JOEL LEWIS,
EDWARD RUQUET, CHRISTOPHER DEVERAUX,
and UNKNOWN IRS STAFF,

Defendants.

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APPEARANCES

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SEYBERT, District Judge:

Pending before the Court are (1) the Government's Motion to Dismiss (Docket Entry 81); (2) Plaintiff's motion to transfer venue (Docket Entry 87); Plaintiff's motion to compel (Docket Entry 89); and (3) Magistrate Judge Anne Y. Shields' Report and Recommendation ("R&R") recommending that this Court dismiss this case without prejudice, (Docket Entry 93). For the following reasons, the Court ADOPTS the R&R in its entirety.

BACKGROUND

This is an action commenced by Plaintiffs Ronald M. Goldberg, Sherwin Geitner, and Phillip C. Leavitt ("Plaintiffs") against the United States of America (the "Government") pursuant to 28 U.S.C. § 1346(a)(1) ("Section 1346") and 26 U.S.C. §7433 ("Section 7433"). All claims arise out of Plaintiffs' allegations that they were wrongfully assessed interest on taxes owed in connection with an oil exploration tax shelter partnership known as the "Fredericksberg Program." (See generally Compl. and at 16.)

On August 5, 2014 the Government filed a motion to dismiss Plaintiffs' Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Docket Entry 81.) That motion was referred to Magistrate Judge Stephen I. Locke on December 15, 2014. (Docket Entry 84.) Plaintiffs then filed a motion to transfer venue on January 18, 2014, (Docket Entry 87), and that motion was also referred to Judge Locke on January 23, 2015,

(Docket Entry 88). Subsequently, Plaintiff's filed a motion to compel on March 9, 2015. (Docket Entry 89.) On March 14, 2015, the case was reassigned to Magistrate Judge Anne Y. Shields. Judge Shields issued her R&R on June 4, 2015 recommending that the Court deny Plaintiff's motion to transfer and dismiss this case without prejudice pursuant to 28 U.S.C. 1406(a). (Docket Entry 93.)

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b) (1) (C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Lindsay's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

Judge Shields' R&R (Docket Entry 93) is ADOPTED in its entirety. Plaintiffs' motion to transfer (Docket Entry 87) is

DENIED and this case is sua sponte DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1406(a). Plaintiffs' motion to compel (Docket Entry 89) is DENIED AS MOOT. Plaintiffs may recommence this case in an appropriate venue as set forth in 28 U.S.C. § 1402. The Clerk of the Court is directed to mark this matter CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: August 20, 2015
Central Islip, NY